

Slovenia: a de facto failed constitutional democracy

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The [political and legal crisis in Slovenia](#) has escalated further. The opposition leader, the former Prime Minister Janez Janša, was taken to prison on June 20 amid public protests and harsh critique waged by the most prominent Slovenian constitutional lawyers. The crisis is due to have huge impact on the fairness of the election, scheduled for July 13. However, this seems to be of no concern to the highest Slovenian courts.

On Monday June 16 the Constitutional Court rejected the petitioner's constitutional complaint as premature, for failing to fulfill extraordinary legal remedies at the Supreme Court. The Court refused to apply Art 51 of the Constitutional Court Act, which exceptionally allows for a constitutional complaint prior to the exhaustion of all legal remedies if the alleged violation of human rights is manifest and if the petitioner is to suffer unrepairable consequences.

The Court ruled 6:3 that while the alleged violations of the petitioner's rights were serious, they were not manifest, within the meaning of the Court's judicial test, so to allow a direct review. This was opposed by three judges, writing for the minority, who have produced extremely critical dissenting opinions, unprecedented in the history of the Court, stressing that the violations of human rights were not only manifest, but were patent and flagrant and were violated in a trial that was manifestly unfair.

The reluctance of the Court to rule on the merits of the constitutional complaint was also heavily criticized by four former Constitutional Court justices. One of them, self-proclaimed political opponent of Mr. Janša, stressed that the final ruling was based on such a violation of procedural, indeed fundamental principles of law (most notably: *nemo iudex since actore*) that he entertained no doubt that the ruling would be and shall be voided by the Supreme Court – immediately.

He was, however, wrong. And so was the Constitutional Court. The latter justified its reluctance to rule on the constitutional complaint prior to the exhaustion of all legal remedies by stressing the importance of the institutional loyalty and its trust in the Supreme Court that it will effectively protect the petitioner's rights, including by suspending the prison sentence until ruling on the merits of the case. However, the Supreme Court obviously defied its trust. What has been going on there, according to media reports, amounts to a farce.

The case was assigned to a judge rapporteur who wanted to recuse herself and as her request was denied by the President of the Supreme Court, she left for a vacation that she had planned before. The President of the Court simultaneously refused to assign the case to another judge, stressing that while the case is of a multidimensional and absolute importance, it justified no special treatment. Moreover, the Supreme Court was – in its public statement – of the opinion that the petitioner himself could have asked for the suspension of the sentence by turning to the District court. As this has not been done, the case is estimated to be decided by the Supreme Court in the usual period of time, that is in four months!

It follows from this that Slovenian judiciary is passing the hot potato from one instance to another, blaming it on the petitioner for failing to use his legal remedies correctly, even when, with all respect to the rule of law, the courts should have acted *ex-offo*. However, while all this can appear to formally comply with the procedural rules, this is pure formalism. In reality, *de facto*, the petitioner has no effective legal remedy at hand to defend his liberty (he is in prison, where he can remain for a number of weeks, even months, as the Supreme Court deliberates, patiently waiting for judges to finish their vacation) and to defend his right to stand for election (he is anticipated to stay in the closed or semi-closed prison ward with no or very limited access to public).

Slovenia has thus become a primer example of a *de facto* failed constitutional democracy, whereby the orchestrated media which filter, as much as possible, the few academic voices that have spoken out – not in favor of the petitioner *ad personam*, let alone his political party, but in favor of what law and justice require, refuse to present to the wider public the Patria case for what it really stands for – an apparent abuse and instrumentalization of law, through the actions and omissions of the judiciary, to eliminate particular political opponents and to consolidate political, economic, legal-institutional and finally overall social power in the hands

in which it has rested so far, that is the old-new post-communist elite. Indeed, this is happening in a country, which used to be known as the best disciple among the new Member States of the European Union.

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